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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052897
Party	Plaintiff Thomas Skold
Correspondence Address	ARTHUR E JACKSON MOSER IP LAW GROUP 1030 BROAD STREET, SUITE 203 SHREWSBURY, NJ 07702 UNITED STATES docketing@mtiplaw.com, ajackson@mtiplaw.com
Submission	Rebuttal Brief
Filer's Name	Arthur E. Jackson
Filer's e-mail	docketing@mtiplaw.com, mcurcio@mtiplaw.com, ajackson@mtiplaw.com
Signature	/Arthur E. Jackson/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration Nos. 2985751; and 3394514

Dated: August 16, 2005 & March 11, 2008, Respectively

Thomas Sköld,	)	
Petitioner	)	
	)	
v.	)	
	)	Cancellation No. 92052897
Galderma Laboratories, Inc.,	)	
Registrant	)	
	)	

**PETITIONER SKÖLD'S REPLY TRIAL BRIEF**

Arthur E. Jackson

Moser Taboada

1030 Broad Street, Suite 203  
Shrewsbury, NJ 07702

Telephone: (732) 935-7100  
Facsimile: (732) 935-7122

*Attorney for Petitioner Thomas Sköld*

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## I. PRELIMINARY STATEMENT

Galderma's response to Sköld's fact-intensive brief once again shows that its main tactic is to try to block evidence and obscure the facts. Galderma barely offers any relevant evidence of its own.<sup>1</sup> Instead, it tries to make a mountain out of a few molehills, plucking out of context a few statements to suggest minor and easily understandable inconsistencies or misunderstandings. The evidence clearly, and with no substantive factual rebuttal, shows Sköld's priority trademark rights.

The introduction to Galderma's brief highlights several important points, but not in the fashion Galderma intends. Galderma denigrates Sköld's technology as an "unproven theory," implying that the technology is and was rubbish. That is not how Galderma acted in the real world. In the relevant time frame, when it was making real business decisions and not framing issues for litigation, Registrant's Collagenex predecessor and alter ego paid approximately \$2,500,000 for the technology and contracted to pay considerably more.<sup>2</sup> This is hardly the price of rubbish. The real evidence disproves Galderma's post-hoc framing of the facts. Galderma's "unproven theory" argument is just that — an empty litigation argument crafted by lawyers with no basis in fact..

If the technology were no more than an "unproven theory" from 2006 through 2009, why not return the technology to Sköld when he asked in 2006? If it were

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<sup>1</sup> A large part of potentially available evidence comes from within Galderma and its alter ego, Collagenex. And yet Registrant provides no business record evidence from the relevant time frames. All business records relied upon by Galderma are believed to have been provided to it by Petitioner's discovery responses.

<sup>2</sup> The capitalized term "Company" shall be used herein as a simplified means to designate things attributable to Galderma and Collagenex.

rubbish, how could Galderma try to sell the technology to others? Why delay returning the rights in the technology to Sköld for nearly two years after Galderma acquired the technology from Collagenex? There is no good faith answer to any of these questions. Not surprisingly, Galderma presented no testimony from a qualified expert to support its theory about the merit of the technology. The suggestion that the technology has no value is built from nothing.

From its discussion of its asserted creation of trademark rights, it is clear that Galderma's theory of the case is that only billion dollar sales can create trademarks. A mere [REDACTED] in sales cannot. Also, the marketing of mere development services should not count. The Lanham Act does not recognize the privilege of rank that Galderma seeks to assert. The Act does not lay out a private hunting estate for an elite. To try to build elitism into the Act, Galderma's brief repeatedly misinterprets the "public" referenced in a number of case citations. The cases make clear that the "public" here are the companies and individuals relevant to Sköld's business (dermatological product development), and not the general public associated with a mass market product.

In its assertion that Sköld is improperly raising a contract theory, Galderma pretends that Section V.B. of its brief did not exist. Galderma is raising a contract defense to Sköld's clear priority rights. Galderma cannot assert contractual issues as a defense while barring Sköld from responding to that defense. Given that Galderma's pretense is plainly meritless, this brief shall not address in detail the interior sections of Galderma's brief attacking the contract issues.

The discussion below provides specific rebuttals and/or context for assertions in Galderma's brief. Some of Galderma's overstatements are too plain to merit discussion.

The primary thrust of Petitioner's argument can be found in Petitioner Sköld's Trial Brief.<sup>3</sup>

## **II. EVIDENTIARY MATTERS**

Petitioner is understandably confused by Galderma's assertion that the Deposition of Dr. James Marks was not made a part of this record. The deposition was filed along with Sköld Notice of Filing Marks Deposition and a certification of service on Galderma, on 11 June 2014. The Deposition, Notice, and Certification are found at Docket No. 70 in the Board's records.

As to document authentication, Galderma demands more than the rules require. The vast majority of documents cited in Sections IV.1 – IV.27 of the Sköld Brief are emails or other documents (58 in total) that come from or were sent to Galderma entities. Galderma could easily challenge the authenticity of these documents if there were a valid issue.<sup>4</sup> The documents of Sections IV.4, IV.6 and V.28 concern selling activity independent of Galderma. The authenticity of these documents is supported by the associated testimony.

Galderma's hearsay objection likewise has no merit. First, these all are business

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<sup>3</sup> Hereinafter "Sköld Brief;" Internal references to this Petitioner Sköld's Reply Trial Brief are denoted "Sköld Reply."

<sup>4</sup> Please also note that in the discovery phase of this matter Galderma promised to work with the undersigned to identify documents for which it had authenticity issues. However, despite prodding, Galderma never followed through. Emails on the matter include emails from the undersigned to Galderma of 11 Feb. 2013, 6 May 2013, and 2 Oct. 2013. On 9 May 2013, Galderma wrote "[w]e'll get back to you on this as soon as we have a chance to review." Thus, it is galling to have Galderma raise spurious authenticity issues for the documents subject to this failed effort at efficiency.

records under Rule 803(6), and thus admissible.

Second, for the vast majority of the documents cited in Sections IV.1 – IV.27 of the Sköld Brief, the portions relied upon are emails from department heads at Galderma or its predecessor, or attachments to such emails. They are thus statements by a party opponent and are not hearsay under Rule 801(d)(2). One of the Galderma emails is from Jim Wallace, whose email was clearly on a matter that was delegated to him by Galderma. Otherwise, the only other email recipient/sender who is not a clear department head is Shamira Shaimi, an R&D project manager for Galderma clearly writing on her area of expertise. These are people clearly authorized to make the statements on behalf of Galderma, such that the statements are not hearsay.

Third, for the documents cited in Sections IV.1 – IV.27 that are used to show use of “Restoraderm” as equating to Sköld’s technology, the documents are not being offered to prove the truth of what was said in the document. The fact that the words were used in the document is the point. Hence, they do not present hearsay.

As to documents reciting “Restoraderm” and dated after 28 February 2002, relevance falls into at least two categories. First, it is abundantly clear that the superceding relevant agreement between Sköld and Galderma is the 2004 Agreement of Exhibit T3. That agreement provided as revertible assets:

(a) the Restoraderm Intellectual Property; (b) the Books and Records relating to the Restoraderm Intellectual Property... (d) ***all goodwill, if any, relating to the foregoing.***<sup>5</sup>

Hence, uses of “Restoraderm” by Galderma or Collagenex showing that “Restoraderm”

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<sup>5</sup> Sköld Brief at IV.43. As with Petitioner’s Trial Brief, the “Sköld Dep.” shorthand references Sköld’s deposition of 13 November 2013; “Sköld 2<sup>nd</sup> Dep.” references the Sköld deposition of 14 January 2014.



referred to Sköld's technology are relevant to negating Galderma's defense of assignment. Second, evidence on the use of "Restoraderm" after 28 February 2002 shows Sköld's relevant continuing use of the mark.

The testimony provided by Dr. Marks and Jeff Day was fact testimony. To the extent that it presented opinion, the testimony is clearly within the scope of Rule 701 (rationally based on the witness's perception; helpful to determining a fact in issue; and not based on scientific, technical, or other specialized knowledge within the scope of Rule 702).

### **III. REMARKS ON GALDERMA'S STATEMENT OF FACTS**

#### **A. Galderma's Section IV.D.**

Galderma discusses the 2002 Agreement of Exhibit T2 in detail, but it is crystal clear that the 2004 Agreement of Exhibit T3 "cancels and supersedes any and all prior negotiations...agreements... respecting the subject matter hereof and thereof." This superceding includes any agreement as to the Restoraderm mark. Sköld Brief at IV.11.

Suppose it is true that the 2002 Agreement speaks of the trademark associated with the drug delivery system being the exclusive property of Collagenex. Since Collagenex paid the requisite milestone under §3.1(d) of that agreement (Sköld Dep. 151:5-8), it was just as "irrevocably" assigned not just mark but also the technology pursuant to §2.1(b). History shows that the technology assignment was not "irrevocable." Also, the superseding 2004 Agreement speaks just as forcefully about the "assignment" of the technology in question. There is no dispute that the technology was returned to Sköld pursuant to Section 8.5(b) of the 2004 Agreement. Sköld Brief at

IV.23. Clearly, “irrevocably” means irrevocably unless certain termination events happen.

Importantly, it is the 2004 Agreement that matters. That Agreement calls for the return of the Restoraderm mark (Sköld Brief at IV.43; V.D.), a provision that would not have been put in place if Sköld had not brought the mark to Collagenex. ***That reversion provision constitutes an acknowledgement by the Company – untainted by litigation strategy – that Sköld possessed and brought to the relationship the Restoraderm mark.*** As noted in Section IV.12 of the Sköld Brief, Galderma’s attorneys conceded this point during negotiations for the 2004 Agreement.

#### **B. Galderma’s Section IV.E.**

This section opens with a misrepresentation, wrongly suggesting that: “Skold admitted in testimony that all he had to offer at that time was ‘some conjecture about how the vehicle that [he] describe[d] works.’” The question at Sköld Dep. 81:20 was “[s]o what you were laying out here [in Ex. T8] is some conjecture about how the vehicle that you describe works; isn’t that correct?”<sup>6</sup> Consider what “Correct” means in response to this question. It means Ex. T8 sets forth how Sköld thinks his technology works scientifically. Period.

Sköld testimony quoted at pages 13-14 of the Galderma Brief, taken from the next two pages of the transcript (pages 81-82), illustrates the proper context. The testimony is limited to “***during the summer [of 2001] and a short period thereafter.***” Sköld’s direct testimony was that he first manufactured Restoraderm product in “its real

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<sup>6</sup> Annotation added.

form” in about October 2001, i.e., after the summer. Brief at IV.5, see also Sköld Dep. 111:14:22.<sup>7</sup> It is disingenuous for Galderma to suggest that the testimony shows that Restoraderm was never more than a theoretical conjecture.

Sköld delivered Restoraderm-labeled product to Collagenex in November and December 2001, as well as January 2002. Id. Sköld’s services as a Restoraderm product developer were clearly on the market in September 2001. Sköld Brief at IV.2—4. Delivery of that product to Collagenex in 2001 and early 2002, and Collagenex’s appreciation of its “look, feel, smell and how they’re applied to the skin,” were critical to obtaining a consideration-paying contract with Collagenex. Sköld Brief at IV.7.

The fact that Sköld used more than one mark in connection with his technology does not negate that he consistently used the mark “Restoraderm” for his technology. He did make a one-time use of “RestoDerm,” but this is (a) a one-off use and (b) use of essentially the same mark. “Resto,” with its suggestion of restoration, is the same in its impact on a consumer as “Restora.” Thus, merged with “derm” the marks provide the same overall impression. See, McCarthy on Trademarks and Unfair Competition, Fourth Ed., 2008, §23.41.

Consider the portion of Sköld’s testimony reproduced at the junction of pages 14-15 of Galderma’s brief. Read carefully, particularly in the full context provided at Sköld Dep. 120:13 – 121:17, it is clear that “Restoraderm” was conceived as a global mark, and “Lipoderma” was conceived as a mark “for a specific product, not the technology.” Restoraderm was the main player, and the mark that Sköld licensed to Collagenex. If

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<sup>7</sup> The latter testimony making further clear that “still on the drawing board” ended in October, 2001.

Sköld elected to drop “Lipoderm” at that time, so be it. It is irrelevant to this litigation.

Galderma tries to diminish the technology by labeling it “experimental.” In doing so, it ignores Sköld’s testimony affirming his recollections in Ex. T133 about the stability of developed products. Ex. T133 shows that 7 of 8 products developed with Collagenex had satisfactory stability. The testimony was that 5 of the products developed in the Collagenex era were ready for launch.<sup>8</sup> In context, it is clear that Sköld in his testimony lashes out in his frustration with Collagenex’s failure to bring anything to market by saying that “[w]ell, you could probably say it’s been experimental up till 2009, November 27th almost, because there was nothing coming out of it. And unless nothing [sic: something] came out of it, it is still experiments.”<sup>9</sup> This does not say it is experimental in the sense that it does not work. The testimony was that the formulation was in its “real form” starting in October, 2001.<sup>10</sup> This is another example of Galderma taking quotations out-of-context.

### **C. Asserted Admission of No Sales (Section IV.F.)**

Sköld testified that he was paid about [REDACTED] under his agreements with Collagenex (Sköld Brief at IV.13), and he and Jeff Day (Collagenex V.P. for Dermatology) testified that he would not have formed those contracts but for his delivery of product. This is a sale, of product and services. The testimony elicited and relied upon by Galderma says no more than that he did not individually invoice the material

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<sup>8</sup> Sköld Dep. 52:7-20, referencing Ex. T133.

<sup>9</sup> Context found at Sköld Dep. 111:14 – 113:6.:

<sup>10</sup> Sköld Brief at IV.5.

provided to Collagenex.

**D. Asserted Use of His Personal Name instead of Restoraderm (Section IV.G.)**

Galderma asserts that Skold testified that he “used his personal name, as opposed to the term ‘Restoraderm,’ in connection with consulting services.” The testimony relied upon in this section of the Galderma brief merely says that Sköld did not operate under a corporate form. Galderma’s attempt to make something else of it is a jaw-dropping overreach.

**E. Asserted Postponement of Meeting With Johnson & Johnson (Section IV.H.)**

Petitioner’s response to Interrogatory No. 24 was indeed poorly worded, but consistent with his Deposition testimony that the meeting was ended prematurely, hence postponed as to the presentation in full. The 2008 email with Joe Willis is of much the same context, with the business overlay that Sköld likely did not want it to seem like this was a technology that Johnson and Johnson (“J&J”) had previously considered in full and rejected.

Sköld testified that the meeting was scheduled for 9 A.M. and, instead of being a full day meeting, continued for about 2 hours. Sköld Dep. 33:3-11. He further testified that the meeting was imperfect “because they actually had speakers that announced things on a frequent basis.” Sköld Dep. 107:5-10. Consider the well-known facts of the 11 September 2001 events and how they are consistent with the testimony of Sköld **and** Day. The open and notorious facts of the 9/11 timeline are (adapted from Wikipedia):

8:46:30 Flight 11 crashes into the north face of the North Tower (1 WTC).  
 8:55: President Bush arrives at an elementary school in Sarasota. Andrew Card tells him that a small twin-engine plane crashed into the WTC. Before he enters a classroom, Condoleezza Rice tells Bush by phone that it was a twin-engine aircraft—and then that it was a commercial aircraft.  
 9:03:02: Flight 175 crashes into the south face of the South Tower (2 WTC).  
 9:04: Boston Control Center stops all departures within its jurisdiction.  
 9:05: As President Bush is about to begin reading with the students, Card whispers to the president, "A second plane... America is under attack."  
 9:06: The FAA bans takeoffs of all flights bound to or through the certain northeastern airspace.  
 9:08: The FAA bans all takeoffs nationwide for flights going to or through New York Center airspace.  
 9:25: Associated Press informs CNN that the crashes appeared to be an "act of terrorism."  
 9:26: The FAA bans takeoffs of all civilian aircraft nationwide.  
 9:29: President Bush makes his first public statements about the attacks.  
 9:37: Vice President Cheney enters an underground tunnel leading to a security bunker.  
 9:58:59: The South Tower of the World Trade Center collapses.<sup>11</sup>

This is the information that timely came to those senior officials best briefed on the matter. What the timeline highlights, and that anyone in the area on that day would remember, is that people went to work and it was not until well after 9 A.M. that the scope of the catastrophe sank in. Perception went from strange, vague reports, to more serious reports that might equate to the 1993 attack on the Trade Center, to information that made it clear that the attack was more serious, to the post-10 A.M. crystallization

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<sup>11</sup> With the exception of the Associated Press recitation, and with minor variations in the stated times, the timeline can be further confirmed at: (1) [www.9-11commission.gov/report/911Report.pdf](http://www.9-11commission.gov/report/911Report.pdf); (2) [timeline.national911memorial.org](http://timeline.national911memorial.org); (3) [www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB165/faa4.pdf](http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB165/faa4.pdf); (4) [www.history.com/topics/9-11-timeline](http://www.history.com/topics/9-11-timeline); (5) [edition.cnn.com/2001/US/09/11/chronology.attack](http://edition.cnn.com/2001/US/09/11/chronology.attack); [www.ap.org/Content/AP-In-The-News/2012/AP-compiles-a-Sept-11-Style-and-Reference-Guide](http://www.ap.org/Content/AP-In-The-News/2012/AP-compiles-a-Sept-11-Style-and-Reference-Guide); and (6) [www.foxnews.com/story/2003/09/11/timeline-sept-11-2001](http://www.foxnews.com/story/2003/09/11/timeline-sept-11-2001). The Board can and should take Judicial Notice that basic contours of this timeline, since the facts well known in the United States, and readily determinable from sources whose accuracy cannot reasonably be questioned.

that an enormous catastrophe was occurring.

The J&J meeting occurred from 9 A.M. and continued for a period, because that is what most makes sense in light of the timeline. Just as the President, the best briefed person on the planet, began his meeting with elementary school students, so did Johnson & Johnson begin its meeting.

This takes us to a strange assertion in Galderma's brief that the meeting was "directly across the river" from the World Trade Center, implying that the impact of 9/11 should have been too immediate to have allowed for the meeting to have occurred. The implication is meritless and absurd. Where does Galderma think the meeting occurred? There is no testimony on this point, and It is an open and notorious fact that J&J is and was headquartered in New Brunswick, New Jersey, with the consumer division then and now located in Skillman, New Jersey. The meeting occurred in Skillman. The Skillman site is more than 40 miles from the 9/11 site.<sup>12</sup>

As to Galderma's attack on Exhibits T8 and T9 at p. 20 of its brief, Sköld testified he showed Collagenex a document substantially the same as, if not identical to Ex. T8. Sköld Dep. 17:3-6. At Sköld Dep. 18:19-24 he testified that Ex. T8 uses the phrase "Restoraderm." At Sköld Dep. 82:9-17 he testifies as to the differences between Ex. T8 and what he showed Collagenex, and does not mention "Restoraderm" as being different. He averred under oath in his Affidavit of Ex. T146 at ¶4: that the version of Ex. T8 used in September 2001 recited "Restoraderm." At Sköld Dep. 91:20-23 Sköld

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<sup>12</sup> Sköld's testimony at Sköld Dep. 106:22-24 is not to the contrary. Without explanation of the meaning, *Galderma's question* used the phrase "basically across the river" to elicit the testimony. Petitioner's response cannot be interpreted as meaning more than that he saw something – which at 40+ miles distance could not have been much.

testifies as to the differences between Ex. T8 and what he showed Collagenex, and says that it was substantially the same, but with more detail. By this and other testimony it is clear that the recipients of his presentation were well informed as to what Restoraderm was, and were informed to associate “Restoraderm” with that subject matter.

**F. Medicis (Section IV.H.)**

Sköld testimony on Medicis should be read from Sköld Dep. 98:6 to 100:23 for more accurate context than provided by Galderma’s quote. Sköld forthrightly acknowledges that there is some fog in his recollections from more than 12 years ago with respect to how Medicis received written materials. Read in context, “I can’t say for sure” says I cannot say who (Sköld or Day) had interactions with and supplied more information to Medicis prior to the September 12 teleconference, but somebody did.

**G. Minor Conflicts in Memories of September 2001 Meeting With Collagenex (Section IV.H.)**

As Sköld had to reflect on what happened more than 12 years ago, it on reflection only made sense that the meeting occurred on September 12. Whether the meeting was spontaneous or pre-planned, is not relevant. It may be that there was a possible miscommunication between Day and Sköld as to scheduling this meeting – the undersigned on the day of writing this paragraph noted a misinterpretation he made of an email received a week or so previously. There cannot be any real doubt that the meeting occurred in this time period. This was when Sköld made the substantial journey from Sweden, and thereafter very quickly a technology licensing agreement between



Sköld and Collagenex came into place.

#### **H. Day Deposition (Section IV.H.)**

Jeff Day was anxious about the deposition. He had “never been through this type of deposition before.” Day Dep. 34:8-9. But, as usual, Galderma takes small things that are ordinary in testimony about events more than 12 years past, and seeks to paint the Company’s former Vice President for Dermatology as dishonest.

This section of Galderma’s brief begins with exquisitely plain misstatement of the record. Day testified that between his jobs Ferndale and Collagenex, he operated his own company, Rx Pharmaceuticals (i.e., Rx Pharma). Day Dep. 5:16-25. At Rx Pharma he sold two products, a topical steroid marked Pandel and Pro-Q, the inventory for the latter acquired from Ferndale. Day Dep. 41:13 – 42:12. Thus, when Galderma seeks to interpret the Day’s answer at Day Dep. 50:21 as meaning he was “*unemployed*,” it speaks with galling disingenuousness. Moments earlier, recorded on page 48 of the transcript, Galderma begins asking Day about the “job” he would obtain with Collagenex. So, when moments later he answered “No, I didn’t have a job at that particular point yet anyway,” he clearly means I did not have a corporate job of the type under discussion. *Galderma has no evidence that Day was unemployed.* It has no basis for making the assertion. As to the innuendo of dire financial need, Galderma has no evidence of any financial constraints on Day, and has seen contrary evidence that he had product to sell.

Next Galderma makes much noise over Day working through whether Exhibit T8 was presented at the September 2001 meeting with Collagenex. The undersigned

asked on direct *if the substance was presented*. He did this because he knew that six days earlier Day was less sure of whether he saw the exhibit itself at the meeting. Day repeatedly confirmed in the deposition that the substance and the mark had been presented. If he were a liar, and in Sköld's pocket, he would have said throughout that he saw Ex. T8. On re-direct, after spending about 2 hours reliving these events from more than 12 years ago, he decided that he had indeed seen the exhibit.

Then, as if it were the piece de resistance, Galderma highlights a non-material mistake in Jeff Day's Bio on Quinnova's website. Day or his assistant jumbled his work with Pro-Q with Restoraderm. So what? Day did work on Restoraderm in the relative time frame, so there is no substantial misrepresentation to the public. There was no licensed Restoraderm product about 12-13 years ago, as would be implied by the Bio, but instead there was one about 11 years ago.

So, again, we have weak innuendo instead of fact. Collagenex was merged into Galderma. Galderma is Collagenex. So if the Day or Sköld testimony was false, where is the insider evidence available to Galderma to show this falseness? It is not here because it does not exist.

## **I. Additional Context on Truthfulness**

Galderma cannot afford to make *ad hominem* attacks on Dr. James Marks. Thus, it limits its attack to the admissibility of plainly relevant, and newly discovered, evidence. Galderma has sought to imply Sköld's and Day's evidence is made up or exaggerated. Dr. Marks' testimony and Ex.T150 shatters any such implication. If, after reviewing the numerous mis-statements of the record found in Galderma's brief, the Board had any

question as to which party is being forthright, revisiting the Marks Deposition should settle the matter.

#### IV. REBUTALS TO ARGUMENT

##### A. Petitioner's "Mode of Action" Document (Ex. T8) Distinct from the Facts of Cited Cases; Section V.A.2.a. of Galderma's Brief

It should be clear that Sköld's business is nothing like the self-service gas business in Travelers Petroleum, Inc. v. Selfway Inc., 195 USPQ 578 (TTAB 1997). Petitioner was selling his formulation services and the topical formulation. Thus, when he presented the "Mode of Action" document (that is Ex. T8) to 3 of the maximum of 15 relevant U.S. dermatology companies, he was not saying "will you invest in my future service stations?", he was saying you should buy my formulation and formulatory services. According to the evidence, Petitioner had already made product (see, e.g., Sköld Reply at III.B.); he did not need investors to launch his business. Collagenex bought the product and services.

Duffy v. Charles Schwab & Co., 54 USPQ2d 1820, 1821 (D.N.J. 200) is about another party seeking investors to launch its business – and says nothing about the current facts. In the *per curiam* decision of the Court of Appeals for the Second Circuit in American Express Co. v. Goetz, Goetz did not sell credit cards, and was not offering some service essential to making credit cards – he was selling his services in promoting American Express credit cards, and was not using the mark as a designation of the source of those services. American Express, 85 USPQ2d 1913 (2<sup>nd</sup> Cir. 2008)(slip op. at 8).

Thus, all the cases cited in Section V.A.2.a. of Galderma's brief are inapposite, and have provided no guidance to the Board.

## **B. Asserted No Bona Fide Sale**

This section of the brief rests on the mischaracterizations of the record found in Section IV.E. of Galderma's brief, as discussed above in Sköld Reply at III.B. Thus, the argument fails when the record is examined.

In Richardson-Vicks Inc. v. Franklin Mint Corp., 216 U.S.P.Q. 989, 991-92 (TTAB 1982). There, Franklin Mint had no real product. There was one token shipment, with an alleged "invoice" for \$1.27. Contrary to the assertion of "similar facts," Petitioner marketed a real product to 20% or more of the relevant market, and was paid in seven figures.<sup>13</sup> The alleged similarity relies on one of many outrageous misrepresentations of the record, quoting Sköld as conceding his product "was still on the drawing board." As discussed at Sköld Reply at III.B., this remark was for activity predating his sales, namely summer 2001 and a short period thereafter.

Sköld's testimony is quite clear that in 2001 he provided a vehicle for agents such as lidocaine, hydrocortisone and the like. Sköld Dep. 16:7-23; 52:7-20; 110:24 – 111:18; 133:14 – 134:17. Thus, there was vehicle pursuant to the technology – which Sköld brought to the Company in September/October of 2001, and downstream products. Accordingly, when Galderma quotes Sköld's brief on trade channels, it is

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<sup>13</sup> J&J, Allergan and Medicis (Sköld Brief at IV.4-5 and 8). Sköld also presented to the then lower tier companies of Collagenex (Sköld Brief at IV.2) and Bicoastal (Sköld Brief at IV.4). Given the wealth of evidence about what Sköld was selling on his early September 2001 trip to the United States, it is clear that he was selling Restoraderm technology to Bicoastal.

deliberately conflating the two.

Now we come to Galderma's misrepresentation of "public" in trademark law. Galderma misleadingly cites Simmons v. Western Publ'g Co., 834 F.Supp. 393, 397, 31 USPQ2d 1143, 1146 (N.D. Ga. 1993) for the assertion that the transportation must be public. In Simmons, the relevant public for a children's board game is quite different from that public at issue here. Jurisprudential support for the point the Simmons court was making tracks through its citation of Walt Disney Prods. v. Kusan, Inc., 204 U.S.P.Q. 284, 287 (C.D. Cal. 1979), which in turn relies upon New West Corp. v. NYM Co. of Cal., Inc., 595 F.2d 1194, 1200, 202 USPQ 643, 648 (9th Cir.1979), which in turn directly quotes New England Duplicating Co. v. Mendes 190 F.2d 415, 90 USPQ 151, 153 (1<sup>st</sup> Cir. 1951) for the following:

"... the question of use adequate to establish appropriation **remains one to be decided on the facts** of each case, and that evidence showing, first, adoption, and second, use in a way sufficiently public to identify distinguish the marked goods **in an appropriate segment of the public mind** as those of the adopter of the mark, is competent to establish ownership, even without evidence of actual sales."  
[Emphasis added]

Thus, the question is highly fact specific, turns on the relevant business context, and in particular on the appropriate buying public.

Moreover, in connection with the 1988 amendments to the Lanham Act that eliminated "token use" as a basis for registration, and in particular in connection with the definition of use in commerce found at §45 (15 U.S.C. 1127), the House Judiciary Report stated:

[T]he [House Judiciary] Committee recognizes that the "ordinary course of trade" varies from industry to industry. Thus, for example, it might be in the ordinary course of trade for an industry that sells expensive or seasonable products to make infrequent sales. Similarly,

a pharmaceutical company that markets a drug to treat a rare disease will make correspondingly few sales in the ordinary course of its trade; the company's shipment to clinical investigators during the Federal approval process will also be in its ordinary course of trade.<sup>14</sup>

The report of the Senate Judiciary Committee stated:

The committee intends that the revised definition of "use in commerce" be interpreted flexibly so as to encompass various genuine, but less traditional, trademark uses, such as those made in test markets, infrequent sales of large or expensive items, or ongoing shipments of a new drug to clinical investigators by a company awaiting FDA approval....<sup>15</sup>

Similarly, the Board has found that use in commerce "should be interpreted with flexibility to account for different industry practices." Automedx, Inc. v. Artivent Corporation, 95 USPQ2d 1976 (TTAB 2010)(Slip op. at 14). The "public" relevant to show use under §2 of the Lanham Act (15 U.S.C. §1052) is not narrower.

Sköld was selling to a select public, those who will invest serious money to develop medicated dermatology products. From the evidence, it is clear that Sköld did complete a sale to a party and generate approximately 2.5 million dollars U.S. therefrom. The consideration Sköld received was thus far from token. The evidence Sköld has provided to Registrant includes evidence transport of labeled product to Collagenex from Sweden, as discussed above, and that Sköld had come to the United States to make sales presentations on Restoraderm technology to Neutrogena/ Johnson & Johnson/ Ortho Derm, Medicis and Allergan.

**Part V.2.c** of Galderma's brief focuses on language in court opinions on ***analogous use*** in commerce as a basis for proving priority, and again fails to take into

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<sup>14</sup> House Judiciary Report on H.R. 5372, H.R. No. 100-1028,p. 15 (Oct. 3, 1988).

<sup>15</sup> S. Rep. No. 515, 100th Cong. 2d Sess. 44-45 (1988).

account the nature of the relevant market. The "identification" of Restoraderm dermatology formulation with Sköld needed to be in the minds of the **appropriate public**. This identification has been shown as discussed above and in the Sköld Brief. The evidence of record shows that Sköld presented his services, under the Restoraderm mark, to Neutrogena/Johnson & Johnson/Ortho Derm, Medicis, Allergan, Collagenex and Bicoastal. Collagenex was just emerging into the group of credible dermatology development companies. For the sake of argument, we can discount it and Bicoastal. Thus, Sköld presented the services under the mark to the relevant purchasing agents of 3 out of 15 of the relevant public, or 20%. These presentations were made under circumstances of preparation for scheduled business development meetings such that the technology would be memorable – thus providing an enviable advertising penetration for a new product. In other words, there was an enviable association in the minds of the relevant public between Restoraderm and Sköld's technology. Accordingly, Sköld's September 2001 activities were at least analogous use.

As stated in T.A.B. Sys. v. PacTel Teletrac, 77 F.3d 1372, 1376, 37 USPQ2d 1879, 1881 (Fed. Cir. 1996), cited by Registrant, we look to the "actual perception of the **potential consumers** of the service."<sup>16</sup> Herbko Int'l Inc. v. Kappa Book Inc., 308 F.3d 1156, 1162, 64 USPQ2d 1375, 1378 (Fed. Cir. 2002) makes the same point, that the association needed is with the **purchasing public**. Specifically, the activities need to

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<sup>16</sup> Note that Jim Dandy Co. v. Martha White Foods, Inc., 458 F.2d 1397, 173 USPQ 673 (CCPA 1972), is cited by Galderma for text that is merely the Court's reprise, without a statement of approval, of the decision below. Such text, regardless of the merits of the ruling below, is *less than Dicta*. The Court itself more accurately speaks of the "consuming public." Id. at 1399, 173 USPQ. at 675.

"reasonably be expected to have a substantial impact on the purchasing public." Herbko Int'l at 1162, 64 USPQ2d at 1378. See, also, Cent. Garden & Pet Co. v. Daskocil Mfg. Co., 108 USPQ2d 1134, Opp. No. 91188816 (TTAB 2013)(Slip Op. at 16)(Has the association been "created in the minds of the *relevant* public).<sup>17</sup> Such an impact for the Sköld product has been shown above.

In T.A.B. Sys., the consuming public was the large car buying public, and accordingly the activities recited there were not well directed to that public. T.A.B. Sys. at 1372, 37 USPQ2d at 1880. Herbko Int'l is again a case where the consuming public was the large segment of the public interested in crossword puzzles, and is thus not germane here – where there is a more select group that is the purchasing public. The facts germane in the current case show a substantial impact on 20% of the buying public. Accordingly, Registrant's arguments on lack of analogous use fail.

Moreover, it is clear that use in the United States, as relevant to Section 2(d) of the Lanham Act (15 U.S.C. § 1052(d)), is a broader concept than use in U.S. commerce, or use in foreign commerce with the United States. First Niagara Insurance Brokers, Inc. v. First Niagara Financial Group, Inc., 476 F.3d 867, 871 81 USPQ2d 1375 (Fed. Cir. 2007). Petitioner submits that the above-outlined evidence more than shows use in the United States with the relevant public.

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<sup>17</sup> Galderma relies upon Computer Food Stores, Inc. v. Corner Store Franchises, Inc., 176 USPQ 535, 538, Opp. No. 91188816 (TTAB 1973) for its use of the phrase "open and notorious." Yet the recent Cent. Garden opinion of the Board, *cited by Galderma*, expressly explains that such broad statements in certain cases, including Cent. Garden, are incorrect. Cent. Garden explains at Slip Op. 16 that instead the "touchstone of analogous use is a factual determination of whether the use of the mark has created in the minds of the *relevant public*" an appropriate association.



**Part V.2.d** of Galderma's brief is founded on the misrepresentations and over-interpretations of the record discussed above, and fails for this reason.

**Part V.3** of Galderma's brief is founded on no evidence, and no basis for drawing the inferences therein. The Letter of Intent between Collagenex and Sköld was signed in December 2001. Sköld and Galderma disagree profoundly about its meaning, and the meaning of the woefully ambiguous 2002 Agreement.<sup>18</sup> Nonetheless, the Letter of Intent makes Collagenex's pre-mature filing of the mark in Europe and Israel only modestly *ultra vires*, and in any case without significance.

### **C. Asserted Assignment**

**Part V.B.** of Galderma's brief is notable in its contradiction. The Board cannot enforce a contract for Sköld, but it can for Galderma. As discussed, Sköld has priority by clear evidence, and Galderma seeks to make the defense of assignment. As discussed in the Sköld Brief, the superceding 2004 Agreement makes quite clear that Galderma's defense fails. Not only is the 2002 Agreement ambiguous, but three notable elements negate its effect on this litigation. One, it is unambiguously superseded by the 2004 Agreement and an empty letter as to its effect on this litigation. Sköld Brief at V.E. Two, a duty of reversion of the trademark is the only way to make sense of §15 of the May, 2003 three-way agreement between Epitan, Collagenex and Sköld, which calls for Sköld to maintain the license grant ("to the Restoraderm") to Epitan in the event of a termination between Collagenex and Sköld. Sköld Brief at IV.40. Three, a duty of

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<sup>18</sup> That ambiguity, fortunately, is solved by the 2004 Agreement, which expressly superseded the 2002 Agreement, and which makes Sköld's reversionary right to "Restoraderm" thoroughly clear.

reversion matches the expectations of a high level executive of Collagenex. Sköld Brief at IV.42.

## **V. CONCLUSION**

Accordingly, Sköld has priority rights to the mark which he has maintained, and Registrant's defense of assignment is ineffective. Therefore, Registrant's Registrations Nos. 2985751 and 3394514 should be cancelled.

Respectfully submitted,

Date: August 28, 2014

/Arthur E Jackson/  
By: \_\_\_\_\_  
Arthur E. Jackson, Esq.  
New Jersey Bar No. 00288-1995  
ajackson@mtiplaw.com  
MOSER TABOADA  
1030 Broad Street, Suite 203  
Shrewsbury, NJ 07702  
(732) 935-7100  
Attorney for Petitioner

## APPENDIX

Petitioner Sköld hereby states his more particular rebuttals, if needed, to the objections recited in the Appendix of Galderma's brief. Some of the objections are too weak, too much adapted at obstructing truth finding, to merit comment.

Petitioner's Exhibit Number	Rebuttals
T1	<p>Ex. T1 was discussed because on its face it is favorable to Registrant. Registrant sought to so use it in cross-examination at Sköld Dep. 137:4 – 139:20, and learned to its apparent surprise that it was from it's (Collagenex's) attorney. Testimony at Sköld Dep. 57:1 – 58:10 and 137:4 – 139:20 makes it clear that Company's attorney confirmed that "Restoraderm" was part of the "asset" of the 2004 Agreement. The testimony makes clear that Ex T1 is admissible under Rule 801(d)(2)(Opposing Party's Statement).</p> <p><b>Bus. Rec. Testimony 1:</b> At Sköld Dep. 8:25 – 9:12, Sköld testified that each document of Group A and Group B of Ex. T145 "is a true copy of the documents, as found in Skold's physical files," and he stored it "in the ordinary course of business, as Skold does with comparable important business documents." Ex. T7 is a Group B document. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld Dep. 57:1 – 58:10 and 137:4 – 139:20.</p> <p><b>Authentication 1:</b> As to this document, Sköld testified that each document of Group A and Group B of Ex. T145 "is a true copy of the documents, as found in Skold's physical files," and he stored it "in the ordinary course of business, as Skold does with comparable important business documents." Sköld Dep. 8:25 – 9:12. His affirmation was based on the description of the document found therein. Further authentication is per the testimony recited above (for this entry, and for other Appendix entries reciting "Authentication 1," that corresponding text above for that entry).</p>
T3	<p>This was the best copy of the 2004 Agreement available to Sköld. It is the same as Ex. E offered by Galderma, except solely that Company's records included the signature page and Schedule 1.22. If needed, Sköld will rely upon Ex. E in place of Ex. T3.</p>
T7	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld Dep. 35:5-16.</p> <p>Authentication 1 applies.</p>
T8	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible</p>

	<p>per Rule 803(6).</p> <p>Moreover, as noted by Galderma, it is discussed at length in Sköld's Deposition as being the same as or substantially equivalent to what was provided to Collagenex at the meeting in Sept. 2001 (Sköld Dep. 17:3-6).</p> <p>Authentication 1 applies.</p>
T9	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6).</p> <p>Authentication 1 applies. Moreover, as noted by Galderma, it is discussed at length in Sköld's Deposition as being the same as or substantially equivalent to what was provided to Collagenex at the meeting in Sept. 2001 (Sköld Dep. 36:14-22).</p>
T10	<p>Galderma makes the unsupported and provocative assertion that a statement by a predecessor-in-interest does not fall under Rule 801(d)(2) [sic, Galderma brief reads "802(d)(2)"]. This however is not the rule at the TTAB. <u>Kay Corp. v. Weisfield's Inc.</u>, 190 USPQ 565, 569-70 (TTAB 1976).</p> <p>Sheila Kennedy was Dir. Prod. Marketing Collagenex. See Sköld 2nd Dep. 27:16-21. The document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Moreover, further Rule 803(6) testimony is found at Sköld 2nd Dep. 27:16 – 28:4.</p> <p>Authentication is found at Sköld 2nd Dep. 27:16-24.</p>
T11	<p>The document is a very formal record of the Company, one that clearly archived by Galderma. It clearly signed by Collagenex and Sköld, as well as Epitan. Galderma has all tools needed to confirm or deny authenticity.</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld Dep. 67:4 – 69:2.</p> <p>Authentication 1 applies.</p>
T12	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, the author, Ashley, was "director of commercial development [at Collagenex] and the second man, second person in command after Brian Gallagher." Sköld Dep. 42:3-5. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Authentication 1 applies.</p>
T13	<p>Sköld has elected not to rely on this document, and withdraws the exhibit.</p>
T14	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld 2nd Dep. 31:2-20.</p> <p>Day was VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Authentication is found at Sköld 2nd Dep. 31:2-9.</p>

	Galderma makes an assertion, which is apparently based on Sköld 2nd Dep. 31:7-9 (though it does not explain!) that there is a missing conversation between Day and Piacquado. Galderma puts a skewed interpretation on the testimony. There was a separate communication by Day (by phone, fax, separate email, letter, or something) that was and presumably is in the control of Company. It was not something Sköld could have produced.
T15	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld Dep. 70:12-21. Day was VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).
T16	Sheila Kennedy was Dir. Prod. Marketing Collagenex. See Sköld 2nd Dep. 27:16-21. The document is clearly admissible under Rule 801(d)(2). Bus. Rec. Testimony 1 applies. Moreover, further Rule 803(6) testimony is found at Sköld 2nd Dep. 32:12 – 33:6. Authentication is found at Sköld 2nd Dep. 32:12-20.
T17	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld 2nd Dep. 33:11-23 Greg Ford was head of business development at Collagenex. Sköld Dep. 42:9-13. Thus, the document is clearly admissible under Rule 801(d)(2). Authentication is found at Sköld 2nd Dep. 33:11-18.
T18	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld 2nd Dep. 34:5 – 34:20. Brad Zerler was R&D project manager for Collagenex. Sköld Dep. 42:22-24. Listed in Ex.T94 email as VP Research. The document is clearly admissible under Rule 801(d)(2). Authentication is found at Sköld 2nd Dep. 34:5-16.
T19	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 35:2-20. Authentication is found at Sköld 2nd Dep. 35:2-16.
T20	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld 2nd Dep. 36:2-23. Authentication is found at Sköld 2nd Dep. 36:2-19.
T21	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld 2nd Dep. 37:5 – 38:2.
T22	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd

	Dep. 38:2 – 39:19.
T23	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 40:1 – 41:7.</p> <p>Shaima Samira “was a project manager at Galderma's R &amp; D facility in France.” Sköld Dep. 39:25 – 40:1. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Authentication is found at Sköld 2nd Dep. 40:1-17.</p>
T24	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 41:12 – 42:5. For the reasons of Ex. T23, the document is admissible per Rule 801(d)(2).</p>
T25	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 42:12 – 43:10. For the reasons of Ex. T23, the document is admissible per Rule 801(d)(2).</p> <p>Authentication is found at Sköld 2nd Dep. 42:12-24. Further authentication follows from Sköld 2nd Dep. 42:19-21, describing Galderma employee Fredon.</p>
T27	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld Dep. 35:5-16.</p> <p>Authentication 1 applies.</p>
T28	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 45:2-15.</p> <p>Moreover, De Bruyne “in charge of business development internationally for Galderma.” Sköld 2nd Dep. 45:2-8. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Authentication is found at Sköld 2nd Dep. 45:2-11. Moreover, the testimony as to who De Bruyne is at Sköld 2nd Dep. 80:2-8 provides further authentication.</p>
T29	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 45:22 – 46:12.</p> <p>Authentication is found at Sköld 2nd Dep. 45:22 – 46:8.</p>
T30	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 46:19 – 47:7.</p> <p>Authentication is found at Sköld 2nd Dep. 46:19 – 47:3.</p>
T31	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 47:14 – 48:2.</p> <p>Authentication is found at Sköld 2nd Dep. 47:14-23.</p>
T32	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd</p>

	<p>Dep. 48:12 – 49:6.</p> <p>Authentication is found at Sköld 2nd Dep. 48:12 – 49:2.</p> <p>Galderma asserts prejudice in not seeing the later email in this string. The point of T32 is that Sköld is marketing. Nothing in any later email negates that. There is no prejudice.</p>
T33	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 49:13 – 50:5.</p> <p>Authentication is found at Sköld 2nd Dep. 49:13 – 50:1.</p>
T34	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 50:16 – 52:2.</p> <p>Authentication is found at Sköld 2nd Dep. 50:16 – 51:10.</p>
T35	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 52:7-24.</p> <p>Authentication is found at Sköld 2nd Dep. 52:7-20.</p>
T36	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 53:6 – 54:1.</p> <p>Authentication is found at Sköld 2nd Dep. 53:6-22.</p>
T37	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 54:8 – 55:4.</p> <p>Authentication is found at Sköld 2nd Dep. 54:8-25.</p>
T38	<p>Interestingly, Galderma relies upon this document, as its Ex. A, to seek to attack the credibility of Sköld.</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 55:12-25.</p> <p>Authentication is found at Sköld 2nd Dep. 55:12-21.</p>
T39	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 56:5-18.</p> <p>Authentication is found at Sköld 2nd Dep. 56:5-14.</p>
T40	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 56:25 – 59:10.</p> <p>Authentication is found at Sköld 2nd Dep. 56:25 – 58:5.</p>
T41	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 59:15 – 60:9.</p>
T42	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd</p>

	Dep. 60:16 – 61:15. Authentication is found at Sköld 2nd Dep. 60:16 – 61:11. <sup>19</sup>
T43	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 61:22 – 62:14. Authentication is found at Sköld 2nd Dep. 61:22 – 62:10.
T44	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 62:21 – 63:15. Authentication is found at Sköld 2nd Dep. 62:21 – 63:11.
T45	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 63:22 – 64:15. Authentication is found at Sköld 2nd Dep. 63:22 – 64:11.
T46	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 64:22 – 65:22.
T47	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 66:4 – 67:6. Authentication is found at Sköld 2nd Dep. 66:4 – 67:6.
T48	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 67:11-25. Authentication is found at Sköld 2nd Dep. 67:11-21.
T49	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 68:7 – 69:7. Authentication is found at Sköld 2nd Dep. 68:7 – 69:3.
T50	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 69:13 – 70:1. Authentication is found at Sköld 2nd Dep. 69:13-22.
T51	Authentication is found at Sköld 2nd Dep. 70:18 – 71:25. This is an important document from the Chief Financial Officer of Company (Collagenex), meaning that Galderma knows it is authentic.
T52	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 72:4 – 73:1.

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<sup>19</sup> Throughout the Sköld 2<sup>nd</sup> deposition of January 2014, Galderma's counsel tried to block with objections questions authenticating the exhibits. Sköld 2nd Dep. 61:2-4 is illustrative. A review of the deposition as a whole will show this is a repeated pattern. Nevertheless, the witness did confirm under oath the authenticity of each exhibit.



	Authentication is found at Sköld 2nd Dep. 72:4-22.
T53	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 73:8-21. Authentication is found at Sköld 2nd Dep. 73:8-17.
T54	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 74:4 – 75:1. Authentication is found at Sköld 2nd Dep. 74:4-22.
T55	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 75:7-20. Authentication is found at Sköld 2nd Dep. 75:7-16.
T56	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 76:5 – 77:11. Authentication is found at Sköld 2nd Dep. 76:5 – 77:7.
T57	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 77:18 – 78:10. Authentication is found at Sköld 2nd Dep. 77:18 – 78:6.
T58	Authentication 1 applies. Sköld Dep. 40:3-25 is also relevant to authentication. This is a Galderma document, such that Galderma knows that it is authentic. The assertion that this and other documents were not marked as trial exhibits and offered into evidence is absurd.
T59	The document is from Quintin Cassady, Galderma legal counsel (Sköld Dep. 40:21-25), thus, the document is clearly admissible under Rule 801(d)(2). Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld Dep. 47:20 – 48:12. Authentication 1 applies. Sköld Dep. 47:20 – 49:4 is also relevant to authentication. This is a Galderma document, such that Galderma knows that it is authentic.
T60	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 78:17 – 79:13. Authentication is found at Sköld 2nd Dep. 78:17 – 79:9.
T61	Bus. Rec. Testimony 1 applies. Authentication 1 applies. Sköld Dep. 60:22 – 61:18 is also relevant to authentication.
T62	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 79:20 – 80:18. Moreover, De Bruyne “in charge of business development

	internationally for Galderma.” Sköld 2nd Dep. 45:2-8. Thus, the document is clearly admissible under Rule 801(d)(2). Authentication is found at Sköld 2nd Dep. 79:20 – 80:14.
T64	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 81:17 – 82:8. Authentication is found at Sköld 2nd Dep. 81:17 – 82:4.
T65	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 82:16 – 83:4. Authentication is found at Sköld 2nd Dep. 82:16-25.
T66	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 83:11 – 84:1. Authentication is found at Sköld 2nd Dep. 83:11-23.
T67	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 84:8-23. Authentication is found at Sköld 2nd Dep. 84:8-19.
T68	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 85:5-22. Authentication is found at Sköld 2nd Dep. 85:5-16.
T69	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld Dep. 35:5-16. Authentication 1 applies. Sköld Dep. 35:5-16 is also relevant to authentication.
T70	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld Dep. 35:20 – 36:6. Authentication 1 applies. Sköld Dep. 35:20 – 36:6 is also relevant to authentication.
T71	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld Dep. 35:5-16. Authentication 1 applies. Sköld Dep. 35:5-16 is also relevant to authentication.
T72	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 86:1-19. Authentication is found at Sköld 2nd Dep. 86:1-16.
T73	Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld Dep. 35:5-16. Authentication 1 applies. Sköld Dep. 35:5-16 is also relevant to

	authentication.
T74	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Moreover, further Rule 803(6) testimony is found at Sköld Dep. 37:15 – 38:2.</p> <p>Authentication 1 applies. Sköld Dep. 37:15 – 38:2 is also relevant to authentication.</p>
T75	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 87:2-15.</p> <p>Authentication is found at Sköld 2nd Dep. 87:2-11.</p>
T76	<p>The author, Ashley, was “director of commercial development [at Collagenex] and the second man, second person in command after Brian Gallagher.” Sköld Dep. 42:3-5. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 87:22 – 88:11.</p> <p>Authentication is found at Sköld 2nd Dep. 87:22 – 88:7.</p>
T77	<p>The author, Ashley, was “director of commercial development [at Collagenex] and the second man, second person in command after Brian Gallagher.” Sköld Dep. 42:3-5. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 88:18 – 89:6.</p> <p>Authentication is found at Sköld 2nd Dep. 88:18 – 89:2.</p>
T78	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 89:12 – 90:2.</p> <p>Authentication is found at Sköld 2nd Dep. 89:12-23.</p> <p>As to the assertion that the absence of a draft presentation to the Collagenex Board prejudices Galderma: How? Will it say “the Sköld product which is “not called Restoraderm.” As it happens, the presentation is about the company Ponsus, apparently prepared by that company. The attachment is irrelevant.</p>
T79	<p>The author, Ashley, was “director of commercial development [at Collagenex] and the second man, second person in command after Brian Gallagher.” Sköld Dep. 42:3-5. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible</p>

	<p>per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 89:12 – 90:2.</p> <p>Authentication is found at Sköld 2nd Dep. 89:12-23.</p>
T80	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 91:24 – 93:4.</p> <p>Authentication is found at Sköld 2nd Dep. 91:24 – 93:4.</p> <p>On the alleged prejudice of the two missing attachments. One is a press release from Epitan titled “EpiTan reports current market conditions unattractive for substantial capital raising.” It is not relevant. The other is the scientific report aptly summarized in fourth paragraph of the lead email of Ex. T80. Providing it would have been burdensome. It certainly refers to the Sköld product at “Formulation: Restoraderm, Sköld Laboratories.” It clearly does not negate the point raised in the Sköld Brief that the Epitan Agreement was active when the 2004 Agreement was executed.</p>
T81	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 93:9-24.</p> <p>Authentication is found at Sköld 2nd Dep. 93:9-20.</p>
T82	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 94:6-18.</p> <p>Authentication is found at Sköld 2nd Dep. 94:6-15.</p>
T83	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 95:1-22.</p> <p>Authentication is found at Sköld 2nd Dep. 95:1-18.</p>
T84	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 96:4-18.</p> <p>Authentication is found at Sköld 2nd Dep. 96:4-14.</p>
T85	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the</p>

	<p>document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 96:25 – 97:23</p> <p>Authentication is found at Sköld 2nd Dep. 96:25 – 97:19.</p>
T86	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 98:10-23.</p> <p>Authentication is found at Sköld 2nd Dep. 98:10-19.</p> <p>The attachments to this email could have no bearing on the relevant elements of this email: how it uses “Restoraderm” and promotion to Cardinal. The email as Sköld found it has no attachment. If the recitation of an attachment for an earlier email was not in error, that earlier email explains that it is “Methods and Results from Transepidermal water loss measurements after 5day bid application of Olux vs Collagenex Clobetasol foam. Also photograph of skin because the Olux skin became noticeably dry and wrinkly.” The lack of this document does not prejudice Galderma.</p>
T87	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 99:9-23.</p> <p>Authentication is found at Sköld 2nd Dep. 99:9-19.</p>
T88	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 100:5-18.</p> <p>Authentication is found at Sköld 2nd Dep. 100:5-14.</p>
T89	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 100:25 – 101:17.</p> <p>Authentication is found at Sköld 2nd Dep. 100:25 – 101:13.</p>
T90	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible</p>

	<p>per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 101:24 – 102:12.</p> <p>Authentication is found at Sköld 2nd Dep. 101:24 – 102:8.</p>
T91	<p>Inadvertent replicate of T14. Thus, Sköld has elected not to rely on this document.</p>
T92	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 104:1-16.</p> <p>Authentication is found at Sköld 2nd Dep. 104:1-12.</p>
T93	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 104:23 – 105:11.</p> <p>Authentication is found at Sköld 2nd Dep. 104:23 – 105:7.</p>
T94	<p>The author, Brad Zerler, was R&amp;D project manager for Collagenex. Sköld Dep. 42:22-24. He is listed in Ex.T94 email as VP Research. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 105:18 – 106:13.</p> <p>Authentication is found at Sköld 2nd Dep. 105:18 – 106:9.</p>
T95	<p>The author, Greg Ford, was head of business development at Collagenex. Sköld Dep. 42:9-13. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 106:20 – 107:12.</p> <p>Authentication is found at Sköld 2nd Dep. 106:20 – 107:8.</p>
T96	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 109:19 – 108:10.</p> <p>Authentication is found at Sköld 2nd Dep. 109:19 – 108:6.</p>
T97	<p>The author, Greg Ford, was head of business development at Collagenex. Sköld Dep. 42:9-13. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 108:17 – 109:5.</p> <p>Authentication is found at Sköld 2nd Dep. 108:17 – 109:1.</p>
T98	<p>The author, Greg Ford, was head of business development at Collagenex. Sköld Dep. 42:9-13. Thus, the document is clearly</p>

	<p>admissible under Rule 801(d)(2).  Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 109:12-25.  Authentication is found at Sköld 2nd Dep. 109:12-21.</p>
T99	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 110:7-20.  Authentication is found at Sköld 2nd Dep. 110:7-16.</p>
T100	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 111:2-19.  Authentication is found at Sköld 2nd Dep. 111:2-15.</p>
T101	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 112:1-14.  Authentication is found at Sköld 2nd Dep. 112:1-10.</p>
T102	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 112:21 – 113:14.  Authentication is found at Sköld 2nd Dep. 112:21 – 113:10.  The Confidential Disclosure Agreement attached to this email is, as Galderma knows, the plain vanilla documentation of negotiating technology transfer. It has no bearing on this matter, and its lack does not prejudice Galderma.</p>
T103	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 114:3-17.  Authentication is found at Sköld 2nd Dep. 114:3-13.</p>
T104	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 114:24 – 105:11.  Authentication is found at Sköld 2nd Dep. 114:24 – 105:7.</p>
T105	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 115:18 – 116:8.  Authentication is found at Sköld 2nd Dep. 115:18 – 116:4.</p>
T106	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 116:18 – 117:14.  Authentication is found at Sköld 2nd Dep. 116:18 – 117:14.  The attachment that Galderma says should be provided is obviously a public document (!), PCT Patent Appln. WO2006040688. As attached it had no markings. There was no prejudice.</p>
T107	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd</p>

	<p>Dep. 117:19 – 119:11.</p> <p>Authentication is found at Sköld 2nd Dep. 117:19 – 119:11.</p>
T108	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 119:23 – 120:25.</p> <p>Authentication is found at Sköld 2nd Dep. 119:23 – 120:21.</p>
T109	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 121:8 – 122:7.</p> <p>Authentication is found at Sköld 2nd Dep. 121:8 – 122:2.</p> <p>The document attached, about which Galderma complains, is a slightly earlier version (18 Feb. 2005) of Formulation Development Report attached to Ex. T40. There is no prejudice.</p>
T110	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 122:18 – 124:3.</p> <p>Authentication is found at Sköld 2nd Dep. 122:18 – 123:24.</p> <p>The Confidential Disclosure Agreement attached to this email is, as Galderma knows, the plain vanilla documentation of negotiating technology transfer. It has no bearing on this matter, and its lack does not prejudice Galderma. (It is signed by the negotiating partner, a factor that would be favorable to Sköld.)</p>
T111	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 124:12 – 125:9.</p> <p>Authentication is found at Sköld 2nd Dep. 124:12 – 125:5.</p>
T112	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 125:16 – 126:5.</p> <p>Authentication is found at Sköld 2nd Dep. 125:16 – 126:1.</p>
T113	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 126:12 – 127:3.</p> <p>Authentication is found at Sköld 2nd Dep. 126:12-24.</p>
T114	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 127:10 – 128:4.</p> <p>Authentication is found at Sköld 2nd Dep. 127:10-25.</p>
T115	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 128:11 – 129:9.</p> <p>Authentication is found at Sköld 2nd Dep. 128:11 – 129:5.</p> <p>The Confidential Disclosure Agreement attached to this email is, as Galderma knows, the plain vanilla documentation of negotiating technology transfer. It has no bearing on this matter, and its lack does not prejudice Galderma.</p>



T116	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 129:19 – 130:22.</p> <p>Authentication is found at Sköld 2nd Dep. 129:19 – 130:18.</p>
T117	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 131:4-17.</p> <p>Authentication is found at Sköld 2nd Dep. 131:4-13.</p>
T118	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 131:24 – 132:12.</p> <p>Authentication is found at Sköld 2nd Dep. 131:24 – 132:8.</p>
T119	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 132:19 – 133:8.</p> <p>Authentication is found at Sköld 2nd Dep. 132:19 – 133:4.</p>
T120	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 133:23 – 134:12.</p> <p>Authentication is found at Sköld 2nd Dep. 133:23 – 134:8.</p>
T121	<p>The author, Greg Ford, was head of business development at Collagenex. Sköld Dep. 42:9-13. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 134:9 – 135:7.</p> <p>Authentication is found at Sköld 2nd Dep. 1134:9 – 135:3.</p>
T122	<p>The author, Greg Ford, was head of business development at Collagenex. Sköld Dep. 42:9-13. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 135:14 – 136:2.</p> <p>Authentication is found at Sköld 2nd Dep. 135:14-23.</p>
T123	<p>The author, Andrew Powell, was Chief Legal Counsel at Collagenex. Sköld Dep. 42:14-1. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 136:9-23.</p> <p>Authentication is found at Sköld 2nd Dep. 136:9-19.</p>
T124	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 137:4-22.</p> <p>Authentication is found at Sköld 2nd Dep. 137:4-18.</p>
T125	<p>Testimony at Sköld Dep. 10:3-18 makes it clear that this is a</p>

	<p>recorded recollection under Rule 803(5). The listing of companies is too extensive to be pulled from memory on the witness stand.</p> <p>This document is authenticated at Sköld Dep. 10:3-18.</p>
T126	<p>Testimony at Sköld Dep. 10:19 – 12:3 makes it clear that this is a recorded recollection under Rule 803(5). The listing of companies is too extensive to be pulled from memory on the witness stand.</p> <p>This document is authenticated at Sköld Dep. 10:19 – 12:3.</p>
T127	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 138:6-25.</p> <p>Authentication is found at Sköld 2nd Dep. 138:6-18.</p> <p>As to the attachments about which Galderma asserts it is prejudiced, the first is a Powerpoint titled “Overview of Restaderm/Lipoint Technology.” Its content is substantially the same as Ex. T47. The other attachment is Ex. T143, There is no prejudice.</p>
T128	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 139:6-23.</p> <p>Authentication is found at Sköld 2nd Dep. 139:6-19.</p>
T129	<p>There is no prejudice in admitting the relevant portion of an extremely lengthy public document that is freely available to any member of the public. Galderma was given notice in Plaintiff’s pretrial disclosures of this form 10-K. This is admissible pursuant to Rule 803(17).</p>
T132	<p>Testimony at Sköld Dep. 12:4-13 and 49:10 – 51:11.makes it clear that this is a recorded recollection under Rule 803(5). The listing of meetings and dates is too extensive to be pulled from memory on the witness stand.</p> <p>This document is authenticated at Sköld Dep. 12:4-13 and 49:10 – 51:11.</p>
T133	<p>Testimony at Sköld Dep. 12:14-22 and 52:7-20 makes it clear that this is a recorded recollection under Rule 803(5). The listing of meetings and dates is too extensive to be pulled from memory on the witness stand.</p> <p>This document is authenticated at Sköld Dep. 12:14-22 and 52:7-20.</p>
T134	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 141:8-20.</p> <p>Authentication is found at Sköld 2nd Dep. 141:8-16.</p>
T135	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible</p>

	<p>per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 142:2-23.</p> <p>Authentication is found at Sköld 2nd Dep. 142:2-20.</p>
T136, T138, T139, T140, T141	<p>Sköld has elected not to rely on these documents, excepting that certain testimony naming these documents still applies, namely that as to T136 applies to its replicate T76, as to T138 applies to T81, as to T139 applies to T82, as to T140 applies to T83, and as to T141 applies to T86.</p>
T137	<p>The author, Ashley, was “director of commercial development [at Collagenex] and the second man, second person in command after Brian Gallagher.” Sköld Dep. 42:3-5. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 145:11-25.</p> <p>Authentication is found at Sköld 2nd Dep. 145:11-21.</p>
T142	<p>The author, Jeff Day, was in the relevant time frame VP Dermatology at Collagenex. Sköld Dep. 24:22 – 25:2; Day Dep. 6:11-22. Thus, the document is clearly admissible under Rule 801(d)(2).</p> <p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 148:17 – 149:7.</p> <p>Authentication is found at Sköld 2nd Dep. 148:17 – 149:3.</p>
T143	<p>Bus. Rec. Testimony 1 applies. Thus, this document is admissible per Rule 803(6). Further Rule 803(6) testimony is found at Sköld 2nd Dep. 146:12 – 147:11.</p> <p>Authentication 1 applies.</p>
T144	<p>Sköld has elected not to rely on this document.</p>
T145	<p>Testimony at Sköld Dep. 7:17 – 10:2 makes it clear that this is a recorded recollection under Rule 803(5). The listing of documents that he will authenticate with the help of this document is too lengthy to be pulled from memory on the witness stand. The exhibit lessens the burden of authentication, while in conjunction with testimony it establishes the required elements of authentication. The statements that Sköld makes under oath as to these documents are those required under the rules for admission.</p>
T150	<p>The case for admissibility is set forth in Sköld’s Brief in Opposition to Registrant’s Motion to Strike filed with the Board on 11 June 2014, and found at Docket No. 70 in the Board’s records.</p> <p>The authentication of this document is set forth in great detail at Marks Dep. 6:2 – 7:21 (also at Docket No. 70). Dr. Marks was or would be brought on the Scientific Advisory Board of Collagenex. Marks Dep. 10:3-12. The document came from his Collagenex Scientific Advisory Board file. Marks Dep. 14:20-3.</p> <p>In view of the above authenticating information, this is clearly a business record and thus admissible under Rule 803(6).</p>

	<p>Further, the document is used to show use of “Restoraderm” as equating to Sköld’s technology. Thus, the document is not being offered to prove the truth of what was said in the document. The fact that the words were used in the document is the point. Hence, they do not present hearsay.</p>
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Thomas Sköld,	)	
Petitioner,	)	
	)	
v.	)	
	)	Cancellation No. 92052897
Galderma Laboratories, Inc.,	)	
Registrant	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Petitioner Sköld's Reply Trial Brief** (Public and Confidential version) was sent by email on this 28<sup>th</sup> day of August, 2014 to:

Jeff Becker, Esq.  
Haynes and Boone, LLP  
2323 Victory Avenue - Suite 700  
Dallas, TX 75219  
jeff.becker@haynesboone.com

/Arthur E Jackson/

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Arthur E. Jackson